

1 WILLIAM L. OSTERHOUDT (SBN 043021)
2 DOLORES T. OSTERHOUDT (SBN 215537)
3 Law Offices of William Osterhoudt
4 135 Belvedere Street
5 San Francisco, California 94117
6 Telephone (415) 664-4600
7 Facsimile (415) 664-4691
8 Email: osterhoudt@aol.com

9 JANET METZGER (SBN 153226)
10 Law Office of Janet Metzger
11 403 Magee Avenue
12 Mill Valley, CA 94941
13 Telephone (415) 260-8467
14 Facsimile (415) 383-3516
15 janetmetzger@sbcglobal.net

16 Attorneys for Defendant,
17 Damien Sexton

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

20	UNITED STATES OF AMERICA,	)	Case No. CR-07-0742 (EDL)
21)	
22	Plaintiff,	)	DECLARATION OF WILLIAM L.
23		)	OSTERHOUDT IN SUPPORT OF DEFENDANT
24	vs.	)	SEXTON'S <i>EX PARTE</i> APPLICATION FOR
25		)	PRETRIAL ISSUANCE OF RULE 17
26	DAMIEN SEXTON,	)	SUBPOENA DUCES TECUM
27)	
28	Defendant.	)	[F.R.Crim.P. Rule 17(c)
		)	and Crim L.R. 47-3]
		)	Date: March 25, 2008
		)	Time: 10:30 a.m.
		)	Dept.: Judge Elizabeth D. Laporte

29 I, William L. Osterhoudt, declare:

30 1. I am an attorney licensed to practice law in the State of California and before this Court. I
31 am one of the attorneys for defendant Damien Sexton in this action. I submit this declaration in

32 *Declaration of William L. Osterhoudt In Support of Defendant's Ex Parte Application*
33 *for Pretrial Issuance of Rule 17 Subpoena Duces Tecum CR-07-0742 (EDL)*

1 support of the defendant's *Ex Parte* Application for Pretrial Issuance of a Rule 17 Subpoena *Duces*
2 *Tecum*.

3
4 2. Attached hereto is a subpoena *duces tecum* to the custodian of records who possess and/or
5 has control over the following:

6 (a) A flight manifest for United Airlines' Flight No. 189, for the date of March 21, 2007,
7 which flight traveled from Philadelphia to San Francisco;

8 (b) A seating chart showing the seat assigned to each passenger on the flight manifest;
and

9 (c) Contact information, consisting of the telephone numbers, and the physical and/or
10 P.O. Box addresses, and the email addresses for each person aboard Flight 189, for
the date of March 21, 2007.

11 3. The defense seeks the Court authorize a pretrial subpoena to the following individual or
12 entity:

13 (a) Custodian of Records for United Airlines.

14 4. The defense makes this request *ex parte* because we are in need of the documents and
15 information sought herein as quickly as possible in advance of trial, and the prosecution has
16 already told the defense that it wont supply the items sought, nor believes that it legally as required
17 to do so.

18 5. The categories of records requested pursuant to the proposed subpoena are of sufficient
19 particularity and specificity to permit identification by the party subpoenaed. These categories of
20 documents and/or information are believed to be in the possession and/or control of the party and
21 entity named in Paragraph 3 above.

22 6. The categories of records and/or information sought by the proposed subpoena are
23 evidentiary and relevant for the reasons stated in the *Ex Parte* Application for Pretrial Issuance of
24 Rule 17 Subpoena *Duces Tecum* accompanying this declaration. The records and information
25 requested are believed to be in the sole possession of United Airlines, and not otherwise procurable
26 in advance of trial by the exercise of due diligence.

27 7. The defense cannot properly prepare without such production and inspection in advance of
28 trial because only with the aid of the requested information can the defense investigate and

*Declaration of William L. Osterhoudt In Support of Defendant's Ex Parte Application
for Pretrial Issuance of Rule 17 Subpoena Duces Tecum CR-07-0742 (EDL)*

1 interview all eyewitnesses and percipient witnesses to the events giving rise to this case. The
2 information held by these individuals is of clear relevance and necessity to the defense in
3 responding to the statements provided in discovery thus far. Potential information from such
4 eyewitnesses is especially important in this case because the few persons interviewed to date have
5 given conflicting accounts of what transpired aboard Flight 189.

6 8. The failure to obtain the information requested in this subpoena may tend to delay the trial
7 due to the critical nature of the materials sought, and because when and if this information is
8 produced the defendant would need time to investigate it prior to presenting his defense.

9 9. The foregoing pretrial subpoena *duces tecum* is proposed for the purpose of reviewing
10 documents and information in the hands of these individuals and entities (the custodian of records
11 for United Airlines) to protect defendant Sexton's right to evidence that bears on guilt and
12 punishment, pursuant to the Sixth Amendment right to process. This application, therefore, is
13 made in good faith and is not intended as a general fishing expedition.

14 10. We respectfully request the Court issue this subpoena on March 25, 2008, so the defendant
15 will have time to fully review the documents and information produced pursuant to the subpoena,
16 pretrial. The proposed subpoena *duces tecum* has a production date of April 8, 2008, two (2)
17 weeks after the hearing on this matter.

18 I declare under penalty of perjury that the foregoing is true and correct, to the best of my
19 personal knowledge and belief. As to any matters stated on belief, I believe them to be true.

20 Executed at San Francisco, California on March 19, 2008.

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22
23 WILLIAM L. OSTERHOUDT.

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Declaration of William L. Osterhoudt In Support of Defendant's Ex Parte Application
for Pretrial Issuance of Rule 17 Subpoena Duces Tecum CR-07-0742 (EDL)

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 135 Belvedere Street, San Francisco, California 94117.

On the date set forth below, I caused to be served the document entitled:

DECLARATION OF WILLIAM L. OSTERHOUDT IN SUPPORT OF DEFENDANT
SEXTON'S EX PARTE APPLICATION FOR PRETRIAL ISSUANCE OF RULE 17
SUBPOENA DUCES TECUM

on the party in this action as follows:

Allison Marston Danner
Assistant United States Attorney
450 Golden Gate Avenue
San Francisco, CA 94102
allison.danner@usdoj.gov

 X [BY ELECTRONIC SERVICE] Utilizing the ECF system of the United States District Court for the Northern District of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: March 19, 2008

/s/ Christopher W. Choy
Christopher W. Choy

Declaration of William L. Osterhoudt In Support of Defendant's Ex Parte Application for Pretrial Issuance of Rule 17 Subpoena Duces Tecum CR-07-0742 (EDL)